

TITLE 5--GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III--EMPLOYEES

Subpart G--Insurance and Annuities

CHAPTER 84--FEDERAL EMPLOYEES' RETIREMENT SYSTEM

SUBCHAPTER II--BASIC ANNUITY

Sec. 8414. Early retirement

(a) (1) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

(2) A member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service who is removed from such service for failure to be recertified as a senior executive or for less than fully successful executive performance after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

(3) A member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service who is removed from such service for failure to be recertified as a senior executive or for less than fully successful executive performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(b) (1) Except as provided in paragraphs (2) and (3), an employee who--

(A) is separated from the service involuntarily, except by removal for cause on charges of misconduct or delinquency; or

(B) (i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

(ii) is serving under an appointment that is not time limited;

(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

(iv) is separate \1\ from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office--

\1\ So in original. Probably should be ``separated''.

(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

(v) as determined by the agency under regulations prescribed by

the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of--

- (I) 1 or more organizational units;
 - (II) 1 or more occupational series or levels;
 - (III) 1 or more geographical locations;
 - (IV) specific periods;
 - (V) skills, knowledge, or other factors related to a position; or
 - (VI) any appropriate combination of such factors.\2\
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\2\ So in original. Probably should be a semicolon.

after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

(2) An employee under paragraph (1) who is separated as described in subparagraph (A) of such paragraph is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee's agency for which the employee is qualified, and the offered position is not lower than 2 grades (or pay levels) below the employee's grade (or pay level) and is within the employee's commuting area.

(3) Paragraph (1) shall not apply to an employee entitled to an annuity under subsection (d) or (e) of section 8412.

(c)(1) An employee who was hired as a military reserve technician on or before February 10, 1996 (under the provisions of this title in effect before that date), and who is separated from technician service, after becoming 50 years of age and completing 25 years of service, by reason of being separated from the Selected Reserve of the employee's reserve component or ceasing to hold the military grade specified by the Secretary concerned for the position held by the employee is entitled to an annuity.

(2) An employee who is initially hired as a military technician (dual status) after February 10, 1996, and who is separated from the Selected Reserve or ceases to hold the military grade specified by the Secretary concerned for the position held by the technician--

(A) after completing 25 years of service as a military technician (dual status), or

(B) after becoming 50 years of age and completing 20 years of service as a military technician (dual status),

is entitled to an annuity.

(d)(1) The Secretary of Defense may, during fiscal years 2002 and 2003, carry out a program under which an employee of the Department of Defense may be separated from the service entitled to an immediate annuity under this subchapter if the employee--

(A) has--

(i) completed 25 years of service; or

(ii) become 50 years of age and completed 20 years of service; and

(B) is eligible for the annuity under paragraph (2) or (3).

(2)(A) For the purposes of paragraph (1), an employee referred to in that paragraph is eligible for an immediate annuity under this paragraph if the employee--

(i) is separated from the service involuntarily other than for cause; and

(ii) has not declined a reasonable offer of another position in the Department of Defense for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level), and which is within the employee's commuting area.

(B) For the purposes of paragraph (2)(A)(i), a separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function may not be considered to be a removal for cause.

(3) For the purposes of paragraph (1), an employee referred to in that paragraph is eligible for an immediate annuity under this paragraph if the employee satisfies all of the following conditions:

(A) The employee is separated from the service voluntarily during a period in which the organization within the Department of Defense in which the employee is serving is undergoing a major organizational adjustment.

(B) The employee has been employed continuously by the Department of Defense for more than 30 days before the date on which the head of the employee's organization requests the determinations required under subparagraph (A).

(C) The employee is serving under an appointment that is not limited by time.

(D) The employee is not in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(E) The employee is within the scope of an offer of voluntary early retirement, as defined on the basis of one or more of the following objective criteria:

(i) One or more organizational units.

(ii) One or more occupational groups, series, or levels.

(iii) One or more geographical locations.

(iv) Any other similar objective and nonpersonal criteria that the Office of Personnel Management determines appropriate.

(4) Under regulations prescribed by the Office of Personnel Management, the determinations of whether an employee meets--

(A) the requirements of subparagraph (A) of paragraph (3) shall be made by the Office upon the request of the Secretary of Defense; and

(B) the requirements of subparagraph (E) of such paragraph shall be made by the Secretary of Defense.

(5) A determination of which employees are within the scope of an offer of early retirement shall be made only on the basis of consistent and well-documented application of the relevant criteria.

(6) In this subsection, the term "major organizational adjustment" means any of the following:

(A) A major reorganization.

(B) A major reduction in force.

(C) A major transfer of function.

(D) A workforce restructuring--

(i) to meet mission needs;

(ii) to achieve one or more reductions in strength;

(iii) to correct skill imbalances; or

(iv) to reduce the number of high-grade, managerial, supervisory, or similar positions.

(Added Pub. L. 99-335, title I, Sec. 101(a), June 6, 1986, 100 Stat. 526; amended Pub. L. 100-325, Sec. 2(m), May 30, 1988, 102 Stat. 583; Pub. L. 101-194, title V, Sec. 506(b)(9), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 105-261, div. A, title XI, Sec. 1109(b), Oct. 17, 1998, 112 Stat. 2144; Pub. L. 106-58, title VI, Sec. 651(b), Sept. 29, 1999, 113 Stat. 480; Pub. L. 106-65, div. A, title V, Sec. 522(b), Oct. 5, 1999, 113 Stat. 597; Pub. L. 106-398, Sec. 1 [[div. A], title XI, Sec. 1152(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-321; Pub. L. 107-296, title XIII, Secs. 1313(b)(2), 1321(a)(5)(A), Nov. 25, 2002, 116 Stat. 2295, 2297.)

Amendments

2002--Subsec. (a)(1). Pub. L. 107-296, Sec. 1321(a)(5)(A), struck out "for failure to be recertified as a senior executive under section 3393a or" before "for less than fully".

Subsec. (b)(1)(B). Pub. L. 107-296, Sec. 1313(b)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "except in the case of an employee who is separated from the service under a program carried out under subsection (d), while serving in a geographic

area designated by the Director, is separated from the service voluntarily during a period in which (as determined by the Director)--

((i) the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function; and

((ii) a significant percentage of the total number of employees serving in such agency will be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53 of this title or comparable provisions);''.

2000--Subsec. (b)(1)(B). Pub. L. 106-398, Sec. 1 [[div. A], title XI, Sec. 1152(b)(1)], inserted ``except in the case of an employee who is separated from the service under a program carried out under subsection (d),'' before ``while serving'' in introductory provisions.

Subsec. (d). Pub. L. 106-398, Sec. 1 [[div. A], title XI, Sec. 1152(b)(2)], added subsec. (d).

1999--Subsec. (b)(1)(B). Pub. L. 106-58 repealed Pub. L. 105-261, Sec. 1109(b)(1). See 1998 Amendment note below.

Subsec. (c). Pub. L. 106-65 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ``A military reserve technician who is separated from technician service, after becoming 50 years of age and completing 25 years of service, by reason of ceasing to satisfy the condition described in section 8401(30)(B) is entitled to an annuity.''

Subsec. (d). Pub. L. 106-58 repealed Pub. L. 105-261, Sec. 1109(b)(2). See 1998 Amendment note below.

1998--Subsec. (b)(1)(B). Pub. L. 105-261, Sec. 1109(b)(1), which directed insertion of ``except in the case of an employee described in subsection (d)(1),'' after ``(B)'', was repealed by Pub. L. 106-58.

Subsec. (d). Pub. L. 105-261, Sec. 1109(b)(2), which directed addition of subsec. (d), relating to authority of Department of Defense to offer employees voluntary early retirement, was repealed by Pub. L. 106-58.

1989--Subsec. (a)(1). Pub. L. 101-194, Sec. 506(b)(9)(A), substituted ``for failure to be recertified as a senior executive under section 3393a or for'' for ``for''.

Subsec. (a)(2), (3). Pub. L. 101-194, Sec. 506(b)(9)(B), (C), substituted ``for failure to be recertified as a senior executive or for'' for ``for''.

1988--Subsec. (a)(3). Pub. L. 100-325 added par. (3).

Effective Date of 2002 Amendment

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Effective Date of 1989 Amendment

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

Government Accountability Office: Voluntary Early Retirement

For provisions relating to the application of subsection (b)(1)(B) of this section to officers and employees of the Government Accountability Office effective Oct. 13, 2000, see section 1 of Pub. L. 106-303, set out as a note under section 8336 of this title.

Application of Subsection (b)(1)(B)

Pub. L. 105-174, title III, Sec. 7001(b), May 1, 1998, 112 Stat. 91, as amended by Pub. L. 106-58, title VI, Sec. 651(a), Sept. 29, 1999, 113 Stat. 480, which provided that, effective May 1, 1998, subsec. (b)(1)(B) of this section was to be applied as if it read as specified in Pub. L.

105-174, Sec. 7001(b), was repealed by Pub. L. 107-296, title XIII, Sec. 1313(b)(4), Nov. 25, 2002, 116 Stat. 2296.